

REMARKS

Claims 1-5 and 8-19 are pending and stand rejected. Applicants respectfully request reconsideration and allowance based on the following remarks.

Rejections Pursuant to 35 U.S.C. § 102(e)***U.S. Patent No. 6,773,436 to Donnelly et al.***

The Examiner rejects claim 19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,773,436 to Donnelly et al. (“Donnelly”). Donnelly, however, fails to disclose a suture channel that is oriented ***substantially transverse at right angles*** to a longitudinal axis of symmetry of an elongate body of the anchor or that has a centerline that is ***laterally offset*** with respect to the longitudinal axis of symmetry of the body in a direction opposite to the direction of a flared portion of the anchor. While the Examiner argues that “the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure,” such position is incorrect for at least two reasons. First, as explained in greater detail in Applicants’ Appeal Brief filed on December 8, 2008, cases subsequent to *Ex parte Pfeiffer* indicate that ***all of the limitations must be considered, and it is error to ignore specific limitations that distinguish over the prior art. See at least Ex parte Kirkland, 1997 WL 1883814 *1 (Bd. Pat. App. & Interf.); emphasis added.*** Second, the claimed invention ***does affect the method in a manipulative sense.*** A person of ordinary skill in the art would recognize that the structure limitations of the suture channel oriented substantially transverse at right angles to the longitudinal axis of symmetry of the elongate body of the anchor and the centerline that is laterally offset with respect to the longitudinal axis of symmetry of the body in a direction opposite to the direction of the flared portion of the anchor ***do affect*** the method in a manipulative sense.

Accordingly, claim 19 represents allowable subject matter.

U.S. Patent No. 7,320,701 to Haut et al.

The Examiner rejects claims 1, 8, 9-13, 15, 16 and 19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,773,436 to Haut et al. (“Haut”). Haut, however, was filed on June 2, 2003, which is less than one year before the present application was filed. Applicants submit

herewith a Declaration of Shelby L. Cook, Jose E. Lizardi, Karl S. Reese, and Thomas A. Shepard Pursuant to 37 C.F.R. § 1.131. This Declaration established that the claimed invention was completed prior to June 2, 2003, which is the earliest priority date that could possibly be claimed by Haut. Accordingly, Haut can no longer be relied on as prior art, thereby obviating the basis for the Examiner's rejection.

Rejections Pursuant to 35 U.S.C. § 103(a)

U.S. Patent No. 7,320,701 to Haut et al.

The Examiner rejects claims 2, 3, 14, 17, and 18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,773,436 to Haut et al. As discussed above, Haut can no longer be relied upon as prior art in view of the Declaration of Shelby L. Cook, Jose E. Lizardi, Karl S. Reese, and Thomas A. Shepard Pursuant to 37 C.F.R. § 1.131. Accordingly, the basis for the Examiner's rejection is obviated.

U.S. Patent No. 6,270,518 to Pedlick et al. in view of U.S. Patent No. 5,626,612 to Bartlett

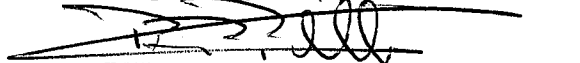
The Examiner rejects claims 1-5 and 8-18 under 35 U.S. § 103(a) as unpatentable over U.S. Patent No. 6,270,518 to Pedlick et al. ("Pedlick") in view of U.S. Patent No. 5,626,612 to Bartlett ("Bartlett"). As explained in greater detail in Applicants' Appeal Brief filed on December 8, 2008, the Examiner's proposed combination fails to render obvious the inventions claimed in either of independent claims 1 and 15. Accordingly, claims 1 and 15, as well as claims 2-5, 8-14, and 16-18 which depend therefrom, represent allowable subject matter.

CONCLUSION

Applicants submit that the pending claims are in condition for allowance, and allowance thereof is requested. If the Examiner believes that further communication would expedite the prosecution of this application, Applicants encourage the Examiner to contact the undersigned attorney.

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Respectfully submitted,



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